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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/579,111	05/11/2006	Janine T. Bryan	21561P	3681
210 7590 09/19/2008 MERCK AND CO., INC P O BOX 2000 RAHWAY, NJ 07065-0907				
EXAMINER				
SALIMI, ALI REZA				
ART UNIT		PAPER NUMBER		
1648				
MAIL DATE		DELIVERY MODE		
09/19/2008		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/579,111

Applicant(s)

BRYAN ET AL.

Examiner

A R. Salimi

Art Unit

1648

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 May 2008.
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-25 and 29 is/are pending in the application.
4a) Of the above claim(s) 10-25 and 29 is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 1-9 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☒ The drawing(s) filed on 11 May 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO/S508)
Paper No(s)/Mail Date 5/11/06
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Claims 1-25 and 29 are pending.
Raw Sequence Listing have been entered.
Submitted Information Disclosure Statement (I.D.S) is noted.

Election/Restriction

Applicant's election with traverse of Group I in Paper filed 05/05/2008 is acknowledged. The traversal is on the ground(s) that the subject matters of Groups I, and II should be examined together. Upon reconsideration, Applicants' argument is persuasive regarding rejoinder of Groups I-II. Hence, claims 1-9 have been rejoined.

However, regarding the Groups III-V (10-25, and 29) the restriction is still deemed valid under PCT Rule 13.2. This portion of the requirement is still deemed proper and is therefore made FINAL.

Applicants are reminded to cancel the claims to the non-elected claims. Claims 1-9 are considered.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 1 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The intended metes and bounds of the claimed invention are not defined. The claim is vague and indefinite for recitation of "comprising" limitation. Amending the claim to "consisting" would obviate this rejection. This affects the dependent claims 2-9.

Subject Matter Allowable over Prior art

Claims 1-9 are deemed free of prior art, given failure of the prior art to teach or reasonably suggest the codon-optimized nucleotides of HPV-58 as defined SEQ ID NO: 1. The closest prior art identified is by Sette et al (US Pub. 2007/0053922). Sette et al taught the a polypeptide defined under the sequence identification number SEQ ID NO: 60, which incidentally is longer than SEQ ID NO: 2 and has only 90% identity to SEQ ID NO: 2. Sette et al did not, disclose the nucleic acid of codon-modified HPV-58 L1 of SEQ ID NO: 1, and there is no teaching of expression of SEQ ID NO: 1 in yeast cell in general, or *Saccharomyces cervisiae* in particular. Sette et al never disclosed the codon-optimized protein or nucleic acid of codon modified HPV-58 L1 as defined by SEQ ID NO: 1.

No claims are allowed.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to A. R. Salimi whose telephone number is (571) 272-0909. The examiner can normally be reached on Monday-Friday from 9:00 Am to 6:00 Pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell, can be reached on (571) 272-0974. The Official fax number is (571) 273-8300.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (571) 272-1600.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/A R Salimi/

Primary Examiner, Art Unit 1648

08/28/2008